

Proposed Model Regulation for
Apportionment of Income from the Sale of Telecommunications,
Ancillary and Similar Services

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Draft – For Discussion Purposes Only

Special rules: Telecommunications, ancillary and similar service providers. The following special rules are established with respect to the apportionment of income from the sale of telecommunications, ancillary and similar services by a person that is taxable both in this state and in one or more other states.

(1) In general. When a person providing telecommunication, ancillary or similar services has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined by Article IV of the Multistate Tax Compact and the regulations issued thereunder by this state, except as modified by this regulation.

(2) Definitions.

~~(i) “communication” means any sign, signal, writing, image, sound or intelligence of any nature including voice, data, text, audio, video, or any other information or instructions.~~

~~(ii) “telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. The term includes but is not limited to wireline, fixed wireless service, mobile wireless service, paging service, prepaid calling service, prepaid wireless calling service, private communication service, value-added non-voice data service, coin-operated telephone service and pay telephone service.~~

~~A. “fixed wireless service” means a telecommunications service that provides radio communication between fixed points.~~

~~B. “mobile wireless service” means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only,~~

telecommunications services that are provided by a commercial mobile radio service provider.

C. “paging service” means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

D. “prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount, except for the retail sale.

E. “prepaid wireless calling service” means the sale of a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount, except for the retail sale.

F. “private communications service” means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

G. “value-added non-voice data service” means a service that otherwise meets the definition of “telecommunications services” in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

H. “pay telephone service” means a telecommunications service provided through any pay telephone.

~~the electromagnetic transmission, conveyance, routing, emission or reception of communication by or through the use of any medium including: wires, cables, satellite, microwave, electromagnetic waves, light waves, radio waves, the internet, or any combination of those or other media now in existence or that might be devised. Telecommunications does not include the communication content of any such transmission, conveyance, routing, emission or reception.~~

(ii) “ancillary service” means services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing, directory assistance, vertical service, conference bridging service and voice mail services. The term does not include tangible personal property or the installation or maintenance of wiring or equipment on a customer’s premises.

A. “detailed telecommunications billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

B. “directory assistance” means an ancillary service of providing telephone number information, and/or address information.

C. “vertical service” means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

D. “conference bridging service” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

E. “voice mail service” means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(iii) “telecommunications or similar service” means the provision of advertising (including but not limited to directory advertising), telecommunications billing and collection services provided to third parties, Internet access service, [to be discussed from SST: data processing and information services, radio and television audio and video programming services.] [To be discussed from prior draft: cable or satellite television or radio programming distribution, web search portals.]

~~any telecommunications, including telecommunications provided by resellers. The term includes, but is not limited to, , telephone service, facsimile service, telegraph service, paging service, personal communication services, satellite telephone service, mobile or cellular telephone service, and related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, service disconnection, voice mail service, and vertical services, such as caller ID and three-way calling. In addition, the~~

~~term includes, but is not limited to, the provision of telecommunication network access, information service, voice over internet protocol services, cable or satellite television or radio programming distribution, Internet access service, web search portals, and data processing services.~~

(iv) “outerjurisdictional property” means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications or similar service business, but that are not physically located in any particular state.

(v) A. "service address" means the location of the customer's equipment which originates or receives the communication, regardless of the address to which the fee for telecommunication or similar service is billed or from which it is paid. B. If the location in (2)(v)A of this section is not reasonably determinable, "service address" means the origination point of the signal of the telecommunications or similar service first identified by either the seller's system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. C. If the locations in divisions (2)(v)A and B of this section are not known, "service address" means the location of the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act.

(vi) “telecommunication network access service” means the provision by a local exchange telecommunication service provider of the use of its local exchange network by an interexchange telecommunication service provider to originate or terminate the interexchange telecommunication service provider's traffic carried to or from a distant exchange.

(vii) “telecommunications nonrecurring charges” means an amount billed for the installation, connection, change or initiation of telecommunications service received by the customer.

THE REMAINDER OF THE RULE IS UNFINISHED. IT WILL NEED TO BE AMENDED TO REFLECT THE FINAL VERSION OF THE AMENDMENTS ABOVE

(3) Apportionment and Allocation

(i) A person providing telecommunications or similar services that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule.

(ii) All items of nonbusiness income shall be allocated pursuant to the provisions of [Section 4 of UDITPA or state equivalent].

(iii) All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's sales factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A property, payroll, or sales factor is missing if the taxpayer has no such property, payroll or sales, respectively, anywhere.

(iv) Except as otherwise provided in this, or another, special rule, the property factor shall be determined in accordance with [Sections 9, 10, and 11 of UDITPA][or state equivalent], the payroll factor in accordance with [Sections 13 and 14 of UDITPA][or state equivalent], and the sales factor in accordance with [Sections 15, 16 and 17 of UDITPA][or state equivalent].

(v) Property Factor. Outerjurisdictional property that is used by a taxpayer in providing a telecommunications or similar service shall be excluded from the numerator and from the denominator of the property factor.

(vi) Sales Factor Numerator. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

A. receipts from charges for providing telecommunication or similar service access in this state. "Telecommunication or similar service access in this state" means the ability to originate or terminate the electromagnetic transmission of a communication from a location within this state. An example of this type of receipt is a monthly subscriber fee or customer charge for the ability to originate or terminate a communication at a service address located in this state and without regard to the actual amount of communications originated or terminated at that service address.

B. receipts from charges for telecommunications or similar services not billed on a per-communication or other variable unit basis, if the service address is in this state. An example of this type of receipt is a fixed charge for unlimited telecommunication or similar service, or for up to a set amount or minutes of telecommunication or similar service.

C. receipts from charges for cellular or mobile telecommunications services required to be sourced under the Mobile Telecommunications Sourcing Act, Public Law 106-252, as it may be amended from time to time, if the source, as determined under that act, is in this state; [move – below "F"]

D. receipts from charges for telecommunications or similar services billed on a per-communication or other variable unit basis, if the communication originates and terminates in this state;

E. receipts from charges for telecommunications or similar services billed on a per-communication or other variable unit basis, if the communication either originates or terminates in this state, and the service address is located in this state;

F. receipts from any other charges for telecommunications or similar service if the service address is in this state.

G. receipts from charges for telecommunication network access if the purchasing interexchange carrier's network traffic originates and terminates in this state; or originates or terminates in this state, and the interexchange carrier's customer's service address is located in this state.